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November 13, 2019

The Honorable Peter Wright
Assistant Administrator, Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

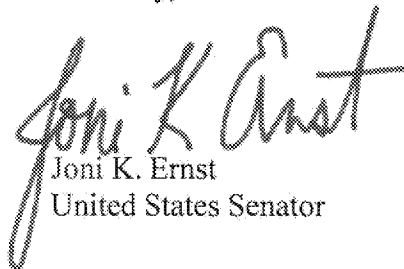
Dear Assistant Administrator Wright:

Attached please find a copy of a letter I recently received from Diamond Vogel, a manufacturer of paints and coatings based in Orange City, Iowa. In recent months, Diamond Vogel has been engaged in discussions with the Environmental Protection Agency (EPA) regarding the cleanup requirements at Vogel Paint & Wax Co. in Maurice, Iowa, which was added to Superfund's National Priorities List in 1986. Diamond Vogel believes that the EPA process lacked transparency and that the company was not given adequate opportunities to participate.

I respectfully ask that Diamond Vogel's concerns be given all due consideration and that EPA contacts the company in a timely fashion.

Thank you for your time and attention to this issue.

Sincerely,



Joni K. Ernst
United States Senator

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Diamond Vogel

October 28, 2019

VIA EMAIL:

Mr. Michael Farr
Environment Legislative Assistant
Senator Joni Ernst's Office
730 Hart Senate Office Building
Washington, DC 20510
Michael_Farr@ernst.senate.gov

RE: Diamond Vogel Superfund Site in Maurice, Iowa

Dear Michael,

Thank you for taking the time to speak with us and contacting EPA regarding Diamond Vogel's concerns about EPA's attempts to change the Point of Compliance for groundwater clean-up at the company's Superfund Site located in Maurice, Iowa. While EPA has now responded to our inquiries about its intent to change the Point of Compliance by issuing the Fifth Five-Year Review ("FYR") report and accompanying letter, Diamond Vogel still has concerns about EPA's process on this issue, including the process of the drafting of the FYR itself. Additionally, EPA states in its September 17, 2019 letter that the Point of Compliance remains a topic for further discussion and evaluation even though EPA found that the current remedy at the Site is short-term protective and recommended that institutional controls could be implemented to ensure long-term protectiveness. Neither the finding nor the suggested remedy requires a change to the Point of Compliance. As such, Diamond Vogel continues to be concerned about EPA's lack of transparency in this process as well as the seemingly arbitrary and abrupt change in direction away from expeditiously moving sites toward clean-up and delisting, a move which appears to directly conflict with EPA's Superfund Task Force Recommendation and Administration Policy. We therefore are requesting your continued oversight as the company attempts to work with EPA throughout the coming months.

As background leading up to the current FYR, at Diamond Vogel's corporate management meeting in October 2017, independently of any request or input from EPA, Diamond Vogel's ownership and management decided that they wanted to pursue more aggressive remediation at the company's Superfund Site in an effort to accelerate Site clean-up as well as to pursue being delisted from the National Priorities List ("NPL"). Diamond Vogel engaged a consulting firm to develop a set of remedial options, and in an April 23, 2018 meeting among the company's CEO, President, Director of Manufacturing, and General Counsel, the company reviewed the consultant's presentation, selected the current bioremediation plan, and approved the related expenditures. All of this occurred before Mr. Mehta was assigned as the new EPA Remedial Project Manager (RMP) for the Diamond Vogel Site and made his first visit in mid-May 2018. Shortly after his visit, Mr. Mehta asked the company to develop and submit a work plan to expedite clean-up of the Site, so Diamond Vogel finalized the details of the strategy it had already voluntarily developed, reviewed, and approved in partnership with its consultants and submitted that project as the requested bioremediation Pilot Study Work Plan ("Work Plan").

After submitting the Work Plan, Diamond Vogel requested a meeting with EPA and IDNR. Diamond Vogel wanted to review the plan, answer any questions, and discuss the company's position that implementation of the bioremediation remedy as outlined in the Work Plan and subsequent delisting of the Site from the NPL upon attaining the Point of Compliance would not require changes to the Site's decision documents. It must be noted that IDNR,

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not EPA, is the lead agency supervising Diamond Vogel's Superfund Site. That meeting took place in Kansas City at EPA Region 7's offices on December 12, 2018. At the meeting, EPA, and in particular EPA's attorney, Jared Pessetto, expressed concern that EPA Headquarters may have questions about approving the bioremediation remedy proposed in the Work Plan without a revision to decision documents. Those documents include a Record of Decision ("ROD") published in 1989, an Explanation of Significant Differences ("ESD") which made changes to the ROD in 2000, as well as a consent decree between Diamond Vogel and IDNR that was entered in 2003. Diamond Vogel restated its position, supported by IDNR, that revised decision documents were not legally necessary, would be a lengthy administrative process that would serve only to slow progress on Site clean-up, and would contradict EPA's stated Superfund Task Force Recommendations and Administration Policy of flexibility and moving Sites toward clean-up and delisting. Diamond Vogel suggested that EPA Region 7 and IDNR meet with EPA Headquarters to discuss the matter and they agreed to do so.

Over the next number of months, Diamond Vogel was in frequent contact with Mr. Mehta about the Site and the Work Plan and asked multiple times for updates about the meeting with EPA Headquarters. Diamond Vogel received no response. On July 1, 2019, Diamond Vogel learned from IDNR that a phone conference had taken place on May 20, 2019 between IDNR, EPA Region 7, and EPA Headquarters that was purportedly to discuss whether decision documents would need to be revised in order to implement Diamond Vogel's bioremediation Work Plan. Diamond Vogel was not notified of that call in advance or informed by EPA afterward, but we understand, based on conversations with IDNR, that rather than discussing decision documents as they related to the Work Plan and the possibility of eventual Site delisting, a representative from EPA Headquarters started the call by talking about changing the Point of Compliance for the Site and that became the sole focus of the conversation. When IDNR noted that the current Point of Compliance was established in the ESD, this Headquarters staff member basically told IDNR that EPA was not going to "talk about IDNR's past mistakes," which is unprofessional, but also factually and legally unfounded since EPA and IDNR had both approved the ESD that established the current Point of Compliance. It was the sense of IDNR that EPA Headquarters and EPA Region 7 coordinated beforehand to align themselves before speaking with IDNR. When IDNR informed us about the existence and substance of the meeting, we were surprised both by EPA's failure to update us regarding the discussion and with the fact that EPA was trying to change the Point of Compliance that has been in effect for 20 years, without a factual reasonable basis to do so, especially when that Point of Compliance had been confirmed by EPA in multiple past Site reviews.

In response, Diamond Vogel sent a letter to EPA on July 9, 2019 asking for clarification on whether EPA intended to change the Point of Compliance and the company explained why, based on the Site history and EPA's own guidance and policy, there was no reasonable basis for EPA to do so. IDNR sent a letter on July 15, 2019, concurring with Diamond Vogel's position and stating that they, as the lead agency on the Site, disagreed with EPA's intent to change the Point of Compliance. Despite multiple follow-up requests, Diamond Vogel received no response or clarification from EPA and decided to reach out to your office for assistance. Shortly after doing so, we received notice that the FYR report had been completed along with an explanatory letter from EPA Region 7.

The process for preparing the FYR report raised its own set of transparency and procedural concerns. On June 7, 2019, Diamond Vogel received an initial draft of EPA's FYR report to review and comment on. We submitted our comments on June 20, 2019 and EPA then substantively changed the draft FYR but did not notify us of the revision or offer us a chance to comment. In this second draft, EPA proposed changing the Point of Compliance, among other things. We only found out about the second draft on July 1, 2019, because IDNR provided us a copy that EPA had shared with them. Under time constraint, Diamond Vogel reviewed the relevant sections of second draft concerning the Point of Compliance and submitted the July 9 letter focusing exclusively on our concerns with the process and EPA's intention to change the Point of Compliance. EPA did not give Diamond Vogel an

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opportunity to provide detailed comment on the revised draft of the FYR. If it weren't for IDNR, Diamond Vogel would not have known about or been able to comment on EPA's recommendation to change the Point of Compliance.

The third and final version of the FYR report, which was completed and signed by EPA on September 10, 2019, included substantive language that was not present in either of the first two drafts of the report and that neither Diamond Vogel nor IDNR (the lead agency on the Site) were given the opportunity to review and comment on before it was finalized and published. In fact, neither IDNR nor Diamond Vogel were informed that the FYR was finalized and published until September 17, 2019. The newly inserted language is far more diplomatic than what was supposedly said during IDNR's teleconference with EPA on May 20, 2019, but the language essentially again accuses IDNR of having made a mistake in the ESD that was approved in 2000, stating "the point of compliance defined in the October 2000 ESD appears to be inconsistent with Iowa's state-wide classification of drinking water aquifers and the EPA's expectation to return groundwater to beneficial uses wherever practicable. This issue needs to be further evaluated between the EPA, IDNR, and Vogel." It is our understanding that IDNR's groundwater classifications and policies were in effect in 2000 and therefore were considered at the time that IDNR and EPA approved the ESD. However, IDNR and Diamond Vogel were not given an opportunity to respond to this assertion before EPA inserted it into the final version of the current FYR. Diamond Vogel and IDNR intend to address this and other concerns about the current FYR separately with EPA.

Therefore, when EPA says in the September 17, 2019 letter to Diamond Vogel and IDNR, a copy of which EPA forwarded to your office, that "The EPA finalized the FYR in consideration of comments provided by IDNR and Diamond Vogel", they are not being entirely forthcoming or accurate given that they only allowed us to provide comments on the first draft of the FYR despite substantive changes to both the second and final drafts.

Accordingly, we are requesting your oversight and assistance. Because of the recent lack of transparency, Diamond Vogel is concerned about how the future discussion and evaluation that EPA calls for regarding the Point of Compliance in the FYR report and the accompanying letter might occur with respect to both Diamond Vogel and IDNR. Diamond Vogel has invested millions of dollars in cleaning up the Site, and the company will continue to make the investments that are necessary to protect human health and the environment and to get the site delisted from the NPL. But the company must have certainty and predictability with respect to the clean-up objectives, and those objectives must have a reasonable basis supporting them. Moreover, the company must be able to participate in a balanced, fair, and transparent process to address and resolve concerns, something which has been sorely lacking to date. We therefore would very much appreciate your continued oversight of EPA during its ongoing discussions with IDNR and Diamond Vogel over the company's current plans to clean the Site and get it delisted from the NPL.

Sincerely,

A handwritten signature in cursive script that reads "Meika Vogel".

Meika Vogel
Vice President, General Counsel

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